



**THE ATTORNEY GENERAL
OF TEXAS**

August 18, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Doyce R. Lee, Commissioner
State Board of Insurance
1110 San Jacinto Blvd.
Austin, Texas 78701-1998

Open Records Decision No. 501

Re: Whether certain escrow
audit reports are protected
from required public dis-
closure under article 9.39 of
the Texas Insurance Code in
conjunction with section
3(a)(1) of the Open Records
Act. V.T.C.S. art. 6252-17a
(RQ-1343)

Dear Mr. Lee:

The State Board of Insurance received a request from the Stewart Title Company for a copy of the Annual Escrow Audit reports filed for the Atascosa County Abstract and Title Company for the years 1979, 1980, 1981 and 1983. You treated the request as a request for public information under the Texas Open Records Act, article 6252-17a, V.T.C.S. Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion JM-672 (1987). You assert that the reports at issue are protected from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with article 9.39 of the Texas Insurance Code. No prior published open records decisions interpret article 9.39.

Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Article 9.39 provides, in part:

Every title insurance agent and direct operation shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such audit report with a letter

of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

. . . .

Each title insurance company shall examine and analyze the audit report furnished by each of its agents and direct operations, and shall [send] within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents or direct operations within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.
(Emphasis added.)

You indicate that, as Commissioner, you designated the reports in question confidential.¹ Consequently, they must be withheld from public disclosure under article 9.39 in conjunction with section 3(a)(1) of the Open Records Act.

The requestor in this case, however, is Stewart Title Company. You indicate that Atascosa County Abstract and Title Company, the company that submitted the report in

1. The portion of article 9.39 of the Texas Insurance Code underscored in the text of this decision refers to "reports and analyses furnished by the title insurance company" not by the insurance agent. Nevertheless, it would be anomalous to conclude that reports furnished by the title insurance company are protected while the same report, submitted by the insurance agent, is not. We read the terms "such reports and analysis furnished by the title insurance company" to include the audit report prepared by each title insurance agent.

question, is a title agent representing Stewart Title Company. Stewart Title Company apparently informed you that it received copies of the Atascosa reports from Atascosa but that they cannot now be located.

Although Article 9.39 envisions closing the reports at issue to the public, it envisions that title insurance companies will receive copies of their agents' reports. Each agent required to file a report under article 9.39 "shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents." Thus, article 9.39 required that Atascosa submit a copy of the report to Stewart Title Company. Stewart Title Company apparently received a copy. Article 9.39 requires title insurance companies to analyze the audit reports furnished by their agents and provides that "[i]f a title insurance company fails to receive an audit report from any of its agents. . .it shall forthwith report such omission to the Board." Without such reports they will not be able to perform the analysis required by article 9.39.

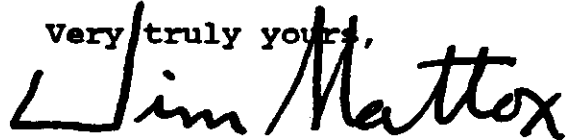
Section 10(a) of the Open Records Act prohibits the release to the public of information deemed confidential under the act. The focus of section 10(a), however, is on release to the public, not to persons with a legal right of access to the information. Open Records Decision No. 490 (1988); see also Open Records Decision No. 481 (1978). In Open Records Decision No. 481, this office determined that constitutional and common-law privacy afford no grounds for denying a person's request for information concerning him. Such a release does not violate section 10(a). See Open Records Decision No. 490 (1988). Nor does such a release violate section 14(a) of the Open Records Act, which prohibits selective disclosure. Section 3(a)(1) of the Open Records Act, in conjunction with article 9.39 of the Insurance Code, prohibits the public release of the information at issue. It does not prohibit the release of the information to the title insurance companies to which it relates.

S U M M A R Y

Section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S., in conjunction with article 9.39 of the Texas Insurance Code prohibits the State Board of Insurance from releasing to the public information covered by article 9.39. It does not prohibit the release of the

information to the title insurance companies
to which the information relates.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style.

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